

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 539 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

RANCHHODBHAI HOTHABHAI & ORS

Appearance:

Shri M.A. Bukhari, Additional Public Prosecutor,

for the Appellant-State

Respondent-Accused No.1 dead

Shri J.B. Dastoor, Advocate, for

Respondents-Accused Nos. 2 and 3

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 16/10/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) at Baroda on 27th January 1982 in Criminal Case No. 1845 of 1981 is

under challenge in this appeal by leave of this Court under sec. 378 of the Code of Criminal Procedure, 1973 (the Cr.P.C. for brief). Thereby the learned trial Magistrate acquitted respondents Nos. 1 and 2 herein of the offences punishable under sections 324 and 325 and 114 of the Indian Penal Code, 1860 (the IPC for brief).

2. The facts giving rise to this appeal move in a narrow compass. According to the prosecution, two persons, named, Bhogilal Muljibhai and Kiritbhai Mangalbhai had gone to Chhani from village Siswa in their bullock-cart for repair of a tyre on 28th May 1981 at about 2.30 p.m. They started their return journey at about 6.30 p.m. When they reached near the village at about 7 p.m. they were assaulted by respondents Nos. 1 and 2 herein with dharias. Both Bhogilal and Kiritbhai sustained injuries on account of such assault with dharias. They were therefore carried to SSG Hospital at Baroda for treatment. Information regarding the incident was conveyed to the Taluka Police Station at Baroda. It was taken down by the Police Station Officer in the vardi book. That set the machinery of investigation into motion. On conclusion of investigation, the necessary charge-sheet was submitted in Court No.3 of the Judicial Magistrate (First Class) at Baroda charging the respondents herein with the offences punishable under sections 324 and 114 of the IPC. It came to be registered as Criminal Case No. 1845 of 1981. It appears that respondent No.3 was also shown as an accused in the charge-sheet. The learned trial Magistrate did not find any evidence against respondent No.3 herein. He was therefore discharged. The charge against respondents Nos. 1 and 2 herein as the accused was framed on 20th August 1981. Neither of them pleaded guilty to the charge. Thereupon both of them were tried. In the course of trial the prosecution applied for amendment of the charge by adding the offence punishable under sec. 325 of the IPC. Thereupon a fresh charge came to be framed on 24th December 1981. After recording the prosecution evidence and after recording the further statement of each accused under sec. 313 of the Cr.P.C. and after hearing the arguments, by his judgment and order passed on 27th January 1982 in Criminal Case No. 1845 of 1981, the learned Judicial Magistrate (First Class) of Court No.3 at Baroda acquitted both the accused of the offences with which they stood charged. The aggrieved prosecution agency has thereupon by leave of this Court invoked its appellate jurisdiction under sec. 378 of the Cr.P.C. for questioning the correctness of the aforesaid judgment and order of acquittal passed by the learned trial Magistrate.

3. During the pendency of this appeal respondent No.1 is reported to have breathed his last. Learned Advocate Shri Dastoor for respondents Nos. 2 and 3 has produced before me a copy of the communication of 15th December 1995 received from the Gram Panchayat of village Siswa reporting the death of respondent No.1 on 31st July 1995. A xerox copy of his death certificate is also produced. This communication and the death certificate are ordered to be kept on record. In view of the death of respondent No.1 being accused No.1, this appeal against him stands abated in view of sec. 394 of the Cr.P.C.

4. Apart from certain material contradictions found by the learned trial Magistrate in the evidence of the injured victims, it was found that one material independent witness was not examined at trial. It was the case of the injured victims that one Harman Singh intervened in the course of the alleged assault by respondents Nos. 1 and 2 herein on the injured victims and took away their dharias. This Harman Singh has not been examined by or on behalf of the prosecution at trial though his police statement was recorded as transpiring from the evidence on record. No reason whatsoever has been given by or on behalf of the prosecution why the said witness was not examined at trial.

5. That apart, the injured victims have stated that they were assaulted with dharias. It is the case of the prosecution that two dharias were recovered from the accused. The injured victims could not identify the weapons of offence produced as muddamal dharias.

6. It may be noted that the incident of assault is stated to have occurred in village Siswa. It had a police patel at the relevant time. Neither the injured victims nor any one on their behalf have informed the police patel of the incident. It cannot be gainsaid that the police patel would also be in a position to convey to the concerned police station the report of the incident if the matter was reported to him. No explanation whatsoever has been given by or on behalf of the prosecution why the police patel of the village was not informed of the incident.

7. It transpires from the evidence on record that the place where the incident is stated to have occurred was not a deserted one and it was full of hutments. No independent witness residing in hutments has been examined as an eye witness of the incident.

8. It may be noted that in his medical certificates at Exs. 32 and 34 on the record of the case the medical officer has not recorded sufficient details of the case history. It was not the case that both the injured victims were unconscious or semi-conscious rendering them incapable of giving the case history. That apart, the history of assault is found recorded in the vardies at Exs. 17 and 18 on the record of the trial. In these vardies four assailants were shown to have assaulted the injured victims. It appears that only three persons were named in the charge-sheet. At trial the injured victims in their oral testimony at Exs. 13 and 15 have referred to only two assailants. In that view of the matter, it was for the prosecution to have explained how two unknown assailants figured in the vardies at Exhs. 17 and 18 on the record of the trial.

9. The learned trial Magistrate has also found that the injured victims and respondents Nos. 1 and 2 herein were at the daggers drawn. The possibility of false involvement of the accused could not be ruled out by the learned trial Magistrate. That is a possible view.

10. In view of my aforesaid discussion, I am of the opinion that the accused have been rightly acquitted by the learned trial Magistrate by giving them a benefit of doubt. The impugned judgment and order of acquittal calls for no interference by this Court in this appeal.

11. In the result, this appeal fails. It is hereby dismissed.
